



2. Plaintiff alleges he was demoted to the position of Acting Warden in March 1995 and “forced to work out of his classification in violation of State Personnel Board Rules and Regulations.” Plaintiff claims he was given an assignment which required him to travel more than 100 miles and that similarly situated white males were given more favorable assignments and more responsibility, despite Plaintiff’s alleged better qualifications. Plaintiff claims that since his demotion, other white employees were allowed to work in higher positions for which Plaintiff was allegedly better qualified. Plaintiff claims he “continuously sought promotions, such as the Institutional Coordinator, the Associate Commissioner, and the Regional Coordinator positions.” Plaintiff also claims that he has been prevented from applying for these positions because of closed applications and prevented from being placed on the registers. Plaintiff also alleges he has been prevented from attaining experience and training and has not been provided the same responsibilities and/or resources and personnel as similarly situated white employees. (Compl. ¶ 64)
3. Finally, Plaintiff generally alleges discrimination in job assignments, training and experience, and other terms, conditions and privileges. Plaintiff alleges that this discriminatory denial has resulted in lower scores and rankings on applications for promotions. (Compl. ¶ 65)

These laundry lists of allegations are made with sparse facts which do not to support the broad, vague and legally conclusory claims. On its face, Plaintiff’s Complaint does not meet the requirements under *Bell Atlantic Corp. v Twombly*, 550 U.S. ----, 127 S.Ct. 1955, 167 L.Ed.2d 929 (2007) of stating a claim for which relief can be granted and therefore is due to be dismissed. Alternatively, the Court should require the Plaintiff to make a more definite statement as the allegations are so vague and ambiguous that the Defendants cannot reasonably be required to frame a proper responsive pleading.

## **II. ARGUMENT AND CITATION OF AUTHORITY**

### **A. Plaintiff’s Complaint Fails to State a Claim Against the Defendants.**

Until the recent Supreme Court decision in *Bell Atlantic Corp. v Twombly*, 550 U.S. ----, 127 S.Ct. 1955, 167 L.Ed.2d 929 (2007), this Court was bound by the rule set forth in *Conley v. Gibson*, 355 U.S. 41, 45-46, 78 S.Ct. 99, 2 L.Ed.2d 80 (1957) that, “a complaint should not be dismissed for failure to state a claim unless it appears beyond a doubt that the plaintiff could

prove no set of facts in support of his claim which would entitle him to relief.” Finding that this formulation has “earned its retirement,” the Court in *Twombly* held that a complaint must now contain factual allegations which are “enough to raise a right to relief above the speculative level.” 127 S.Ct. at 1965. “While a complaint attacked by a Rule 12(b)(6) motion to dismiss does not need detailed factual allegations, a plaintiff’s obligation to provide the ‘grounds’ of his ‘entitle[ment] to relief’ requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do.” *Id.* at 1964-65. Rather, the facts set forth in the complaint must be sufficient to “nudge the[ ] claims across the line from conceivable to plausible,” *Id.* at 1974.

In this Complaint, Plaintiff alleges only sparse factual grounds which do not “raise a right to relief above the speculative level,” and the Plaintiff does not even deign to provide the Defendants or this Court with a recitation of the elements of a cause of action. Apparently, that task is left to the Defendants and the Court to decipher. When most of these events allegedly occurred remains a mystery; no Defendant is identified for any particular allegation; virtually no facts are submitted to support any claim; and no allegation of intent to discriminate is made. In short, this is nothing more than a shotgun complaint which cannot withstand a Motion to Dismiss and this Complaint is due to be dismissed. *See also Marsh v. Butler County*, 268 F.3d 1014, 1036 n.16 (11<sup>th</sup> Cir. 2001) (“[U]nsupported conclusions of law or mixed fact and law have long been recognized not to prevent a Rule 12(b)(6) dismissal.”).

**B. Alternatively, the Plaintiff Should be Required to Provide a More Definite Statement.**

Assuming, *arguendo*, that the Court does not dismiss this Complaint under Rule 12(b)(6) of the Federal Rules of Civil Procedure, Defendants request that this Court enter an Order requiring the Plaintiff to provide a more definite statement as to the claims against the

Defendants. Rule 12(e) of the Fed. R. Civ. P. provides that a party may move for a more definite statement “[i]f a pleading to which a responsive pleading is permitted is so vague and ambiguous that a party cannot reasonably be required to frame a proper responsive pleading.” The Complaint in this case is so vague that it is all but impossible to respond to it in any meaningful manner.

Because “shotgun pleadings,” as in this case, present an unfair burden on the Court and Defendants, the Plaintiff should be required to provide a more definite statement. As recognized by the Eleventh Circuit:

Under the Federal Rules of Civil Procedure, a defendant faced with a [shotgun] complaint is not expected to frame a responsive pleading. Rather the defendant is expected to move the court, pursuant to Rule 12(e) to require the plaintiff to file a more definite statement. Where, as here, the plaintiff asserts multiple claims for relief, a more definite statement, if properly drawn, will present each claim for relief in a separate count, as required by Rule 10(b), and with such clarity and precision that the defendant will be able to discern what the plaintiff is claiming and to frame a responsive pleading. Moreover, with shotgun pleading out of the way, the trial judge will be relieved of the cumbersome task of sifting through myriad claims, many of which may be foreclosed by various defenses. Experience teaches that, unless cases are pled clearly and precisely, issues are not joined, discovery is not controlled, the trial court’s docket becomes unmanageable, the litigants suffer and society loses confidence in the court’s ability to administer justice.

*Anderson v. Dist. Bd. of Trustees of Central Florida Community College*, 77 F.3d 364, 366-67 (11<sup>th</sup> Cir. 1996) (footnotes and citations omitted).

Repeatedly emphasized by the Eleventh Circuit Court of Appeals is the judicial, administrative, and societal costs imposed by broad and vague complaints. *See, e.g., Chapman v. AI Transport*, 229 F.3d 1012, 1027 (11<sup>th</sup> Cir. 2000) (describing shotgun pleading as a “serious” and “ubiquitous problem,” the “evils” of which require a district court to exercise a “firm hand” in dismissing non-meritorious claims); *Byrne v. Nezhat*, 261 F.3d 1075, 1128-134

(11<sup>th</sup> Cir 2001) (holding that, if a defendant does not move for a more definite statement, the trial court “must intervene *sua sponte* and order a repleader”); *Sikes v. Teleline, Inc.*, 281 F.3d 1350, 1355 n. 9 (11<sup>th</sup> Cir. 2002) (“[P]laintiffs’ complaint is yet another example of what we have often criticized as ‘shotgun pleadings,’ where each count ‘incorporates’ all of the preceding paragraphs and counts. We have harshly criticized such shotgun pleadings in the past, and we repeat our displeasure with this type of complaint now.”); *Beckwith v. Bellsouth Telecomms., Inc.*, 146 Fed. Appx. 368, 373 (11<sup>th</sup> Cir. Aug. 22, 2005) (categorizing complaint as a “shotgun” pleading because “[o]nly a few of [plaintiff’s] claims were specific as to any defendant, and the relevant facts were not segregated to each of their respective claims,” making it “virtually impossible to ascertain which factual allegations correspond with each claim”).

Plaintiff’s Complaint does not even contain “counts,” much less separate counts with specific facts outlining the claims. Even a creative reading of the general allegations set forth *supra* discloses only sparse facts supporting Plaintiff’s claim of racial discrimination. Instead, there is simply a laundry list of every conceivable job related activity: “hiring, rehiring, compensation, job duty, assignments, recruitment, selection procedures, denial of promotions, discipline, training and experience, subjective decisions-making practices, and other terms and conditions of employment.” (Compl. ¶ 63).

While Plaintiff alleges his demotion occurred in March 1995, Plaintiff does not provide other more relevant information such as when he sought a particular promotion, or the identity of which Defendant is allegedly responsible for the denial of the promotion. Nor is there any identification of how the Plaintiff’s compensation is discriminatory; what training or experience Plaintiff was denied based on a racially discriminatory reason; nor what disciplinary action suffered by the Plaintiff is alleged to be discriminatory. Moreover, Plaintiff does not even

distinguish the claims among the various Defendants, nor is there any indication as whether the allegations are in support of his Title VII, 42 U.S.C. § 1981 or § 1983 claim. In short, this is nothing more than a shotgun pleading with unsupported conclusions of law or mixed fact and law. Accordingly, Defendants specifically request that Plaintiff be required to set forth each legal claim in a separate count pursuant to Rule 10(b) of the Fed.R.Civ.P. and to identify which facts support each separate claim and against which Defendants they are alleged.

### III. CONCLUSION

For the foregoing reasons, Defendants respectfully request that the Court dismiss the Plaintiff's Complaint against the Defendants pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure. Alternatively, Defendants respectfully request that the Court require the Plaintiff to provide a more definite statement as to his alleged claims against the Defendants as provided for in Rule 12(e) of the Federal Rules of Civil Procedure.

Respectfully submitted,

/s/ Abigail H. Avery

Warren B. Lightfoot, Jr.

John B. Holmes, III

Abigail H. Avery

Attorneys for the Defendants

Department of Corrections, and

Richard F. Allen, Commissioner

OF COUNSEL:

MAYNARD, COOPER & GALE, P.C.

2400 Regions/Harbert Plaza

1901 Sixth Avenue North

Birmingham, Alabama 35203-4604

Telephone: (205) 254-1000

Facsimile: (205) 254-1999

Email: [wlightfoot@maynardcooper.com](mailto:wlightfoot@maynardcooper.com)

[jholmes@maynardcooper.com](mailto:jholmes@maynardcooper.com)

[aavery@maynardcooper.com](mailto:aavery@maynardcooper.com)

Kim T. Thomas  
DEPARTMENT OF CORRECTIONS  
Office of General Counsel  
301 South Ripley Street  
Montgomery, Alabama 36130  
Telephone: (334) 353-3883

/s/ Alice Ann Byrne  
Alice Ann Byrne  
Attorney for the Defendants  
State Personnel Department and  
Jackie Graham, Director of State  
Personnel Board

STATE PERSONNEL DEPARTMENT  
Folsom Administrative Building  
64 North Union Street ~ Suite 316  
Montgomery, Alabama 36130  
Telephone: (334) 242-3451  
Facsimile: (334) 353-4481  
Email: [aliceann.byrne@personnel.alabama.gov](mailto:aliceann.byrne@personnel.alabama.gov)

**CERTIFICATE OF SERVICE**

I hereby certify that on the 29th day of August, 2007, a true and correct copy of the foregoing was electronically filed with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following:

For the Plaintiff:

Russell W. Adams, Esq.  
Rocco Calamusa, Jr., Esq.  
WIGGINS CHILDS QUINN & PANTAZIS, P.C.  
The Kress Building  
301 19<sup>th</sup> Street North  
Birmingham, Alabama 35203-3204

/s/ Abigail H. Avery  
Of Counsel